

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondents,

v.

FRANCISCO TORRES FELIX,

Defendant/Movant.

Case No. 14-CV-00408-RMW
Related to CR-07-00106-RMW-2

**NOTICE OF MOTION FOR REVIEW
UNDER 28 U.S.C. § 2255; REQUEST
FOR RESPONSE**

Defendant Francisco Torres Felix moves to set aside his conviction pursuant to 28 U.S.C. § 2255 on the basis that (1) his sentence was imposed in violation of the right to a speedy trial and (2) he was deprived of effective assistance of counsel.

A. Background

Felix was convicted of gun and drug charges following his guilty plea. Judgment was entered on November 24, 2009. Dkt. No. 136.¹ Felix appealed and his conviction and sentence was affirmed on March 4, 2011. Dkt. No. 184.

On February 27, 2012 Felix filed a “Motion to Reduce Sentence” on the basis that the court did not consider him for a “fast track deportation,” which the court denied. Dkt. Nos. 186, 189.

¹ The docket numbers refer to the criminal case, CR-07-00106.

1 On January 27, 2014 Felix filed his current motion to vacate his sentence pursuant to § 2255.

2 Felix's petition was filed more than one year after his conviction became final. *See* Dkt. No.
3 184 (March 4, 2011 Order of Court of Appeals, plus 90 days to file a petition for writ of certiorari)
4 and Dkt. No. 195 (§ 2255 Motion filed January 27, 2014); *Clay v. United States*, 537 U.S. 522, 525
5 (2003). However, the statute of limitations for § 2255 proceedings is subject to equitable tolling.
6 *See, e.g., United States v. Battles*, 362 F.3d 1195, 1196 (9th Cir. 2004). Felix alleges that his petition
7 was delayed because he was not informed of the one-year limitation by his appellate counsel, he is
8 not able to read and write in English, and it took over a year to obtain the records in his case and
9 develop his arguments. Dkt. No. 195 at 15-16. The court expresses no opinion at this time on
10 whether these circumstances may qualify for tolling.


11 Felix seeks relief from his incarceration and raises the following violations of his federal
12 rights: (1) Sixth Amendment right to a speedy trial; (2) violation of the Speedy Trial Act; and (3)
13 ineffective assistance of counsel. Pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings,
14 the United States Attorney is to file an answer, motion, or other response by July 13, 2014.

15 **ORDER**

16 Respondent is ordered to file an answer, motion, or other response by July 13, 2014.
17 Movant has thirty days following the government's service of its response to reply to the
18 government's filing. The Clerk of Court shall serve a copy of this order and the motion and all
19 attachments thereto upon the United States Attorney's Office for the Northern District of California
20 and send a copy to movant.

21
22 IT IS SO ORDERED.

23
24 Dated: June 19, 2014

25 
26 Ronald M. Whyte
27 United States District Judge
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